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25 UNITED STATES DISTRICT COURT  
26  
27 NORTHERN DISTRICT OF CALIFORNIA  
28  
29 SAN FRANCISCO DIVISION

30 THE REGENTS OF THE UNIVERSITY  
31 OF CALIFORNIA, ABBOTT  
32 MOLECULAR INC., and ABBOTT  
33 LABORATORIES INC.,

34 Plaintiffs/Counterclaim  
35 -Defendants,

36 v.

37 DAKOCYTOMATION CALIFORNIA,  
38 INC.,

39 Defendant/Counterclaim  
40 -Plaintiff.

41 Case No. C 05-03955 MHP

42 **[PROPOSED] STIPULATED  
43 PROTECTIVE ORDER**

Pursuant to Federal Rule of Civil Procedure 26(c), and in order to facilitate production and receipt of information during discovery in the above-referenced action, plaintiffs/counterclaim-defendants The Regents of the University of California (“The Regents”), Abbott Molecular Inc. and Abbott Laboratories Inc. (“Abbott”), and defendant/counterclaim-plaintiff DakoCytomation California, Inc. (“Dako”) hereby stipulate, subject to the approval of the Court, to entry of the following Order for the protection of certain Protected Information, as defined below, that may be produced or otherwise disclosed by a party or by non-parties during the course of this action:

1. This Order shall be applicable to and govern without limitation, all information, things or documents (or portions thereof) produced in responses to discovery requests and subpoenas, answers to interrogatories, responses to requests for admissions, depositions and exhibits thereto, and all other discovery taken, motions papers, pretrial orders, stipulations, testimony adduced at trial, matters in evidence before this Court and other information provided by a party, or non-party responding to a subpoena, which contain non-public and confidential or proprietary information, including trade secrets; know-how or proprietary data; research and development, business, financial or commercial information (“Protected Information”). Any party to this action or non-party producing materials or information in response to a subpoena (“Designating Party”) may designate for protection under this Order any Protected Information that is furnished, filed or served directly or indirectly, by or on behalf of that party in connection with this proceeding. Such Protected Information shall be indicated by means of the designation “HIGHLY CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE DATA,” or “CONFIDENTIAL,” as the case may be.

2. Protected Information shall not include any information that:

- is or becomes lawfully in the possession of the party receiving the same (“Receiving Party”) through communications other than production or disclosure in this action; or
- is or becomes part of the public domain by publication or otherwise and not due to any unauthorized act or omission on the part of the Receiving Party.

3. Documents and other tangible materials (including, without limitation, CD-ROMs and tapes), other than depositions or other pretrial testimony shall be designated for protection

1 under this Order by conspicuously affixing the notation "HIGHLY CONFIDENTIAL,"  
2 "HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE DATA," or "CONFIDENTIAL" on  
3 each page (or in the case of computer medium, on the medium itself) to which the designation  
4 applies, as well as to the first page or cover of such document or material. To the extent practical,  
5 the HIGHLY CONFIDENTIAL, HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE  
6 DATA, or CONFIDENTIAL designation shall be placed near the Bates number.

7       4. Designation of specific portions of deposition transcripts or pretrial testimony as  
8 HIGHLY CONFIDENTIAL, HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE DATA,  
9 or CONFIDENTIAL shall be made by a statement to such effect on the record in the course of the  
10 deposition or pretrial testimony. Upon designation of the transcript on the record during the  
11 deposition, the portion of the deposition containing Protected Information shall continue in the  
12 absence of all persons to whom access to said Protected Information has been denied under the  
13 terms of this Order. The deposition reporter or other person recording the proceedings shall  
14 segregate any portion of the transcript of the deposition or hearing that has been stated to contain  
15 Protected Information and may furnish copies of these segregated portions, in a sealed envelope,  
16 only to the deponent as required by law, to the Court, and to counsel for the parties bound by the  
17 terms of this Order. A Designating Party may also designate any portion or all (if appropriate) of  
18 the transcript as HIGHLY CONFIDENTIAL, HIGHLY CONFIDENTIAL – RESTRICTED  
19 SEQUENCE DATA, or CONFIDENTIAL with reference to the pages and lines of testimony in  
20 the transcript, by so advising the deposition reporter (who shall indicate the designations in the  
21 transcript) and all parties in writing, within thirty (30) calendar days after receipt of the transcript.  
22 Deposition exhibits shall be treated in accordance with any prior designation under this Order, or  
23 may be specifically designated under this Order on the record during the deposition or within  
24 writing within thirty (30) calendar days after the Designating Party has received the deposition  
25 exhibits. If no other designation has been made, a transcript and its exhibits shall be treated as  
26 HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE DATA until thirty (30) calendar days  
27 after it has been received by the Designating Party. In the case of testimony or exhibits  
28 designated HIGHLY CONFIDENTIAL, HIGHLY CONFIDENTIAL – RESTRICTED

1 SEQUENCE DATA, or CONFIDENTIAL following conclusion of the deposition, all parties  
2 shall mark the appropriate legend on all copies of the deposition transcript and its exhibits and  
3 treat the information as Protected Information from the date they are notified of such designation,  
4 if the reporter does not do so. In the event of disagreement about the protected status of a  
5 deposition or hearing transcript or exhibit, it shall be treated as HIGHLY CONFIDENTIAL or, in  
6 the case of sequence data, HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE DATA,  
7 until the Court rules otherwise.

8       5. All designations of material as HIGHLY CONFIDENTIAL or CONFIDENTIAL  
9 shall be made in good faith by the Designating Party and made at the time of disclosure,  
10 production or tender to the Receiving Party, or at such other time as permitted by this Order,  
11 provided that the inadvertent failure to so designate does not constitute a waiver of a claim to  
12 such designation, and a party may so designate material thereafter subject to the protections of  
13 this Order. Nothing shall be designated as HIGHLY CONFIDENTIAL except information that is  
14 clearly a trade secret or has a compelling need for confidentiality and discloses:

15           a. a pending patent application;  
16           b. ongoing new product research;  
17           c. marketing strategies or strategic plans;  
18           d. a product's cost or margin; or  
19           e. information about one or more specific customers.

20       6. A Disclosing Party may specially designate sequence data as HIGHLY  
21 CONFIDENTIAL – RESTRICTED SEQUENCE DATA. Such designation shall be made in  
22 good faith by the Designating Party and made at the time of disclosure, production or tender to  
23 the Receiving Party, or at such other time as permitted by this Order, provided that the  
24 inadvertent failure to so designate does not constitute a waiver of a claim to such designation, and  
25 a party may so designate material thereafter subject to the protections of this Order. Nothing shall  
26 be designated as HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE DATA except  
27 information that is clearly a trade secret or has a compelling need for confidentiality and discloses  
28 the sequence of a nucleic acid or peptide nucleic acid probe or probe fragment within a product or

1 product under development, or the name or sequence of a clone that includes a probe or probe  
2 fragment.

3       7. Each Party or non-party that designates information or items for protection under  
4 this Order must take care to limit any such designation to specific material that qualifies under the  
5 appropriate standards. A Designating Party must take care to designate for protection only those  
6 parts of material, documents, items, or oral or written communications that qualify – so that other  
7 portions of the material, document, items, or communications for which protection is not  
8 warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or  
9 routinized designations are prohibited. Designations that are shown to be clearly unjustified, or  
10 that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case  
11 development process, or to impose unnecessary expenses and burdens on other parties), expose  
12 the Designating Party to sanctions.

13       8. If it comes to a Designating Party's attention that information or items that it  
14 designated for protection do not qualify for protection at all, or do not qualify for the level of  
15 protection initially asserted, such Designating Party must promptly notify all other parties that it  
16 is withdrawing the mistaken designation.

17       9. Inadvertent (*i.e.*, unintentional) production of documents (including physical  
18 objects) subject to work product immunity, the attorney-client privilege, the right of privacy, or  
19 any other applicable privilege, shall not constitute a waiver of the immunity or privilege, provided  
20 that the Designating Party shall notify the Receiving Party in writing of such inadvertent  
21 production promptly after the Designating Party discovers such inadvertent production. After  
22 notification is made, the Receiving Party shall immediately return to the Designating Party all  
23 copies of such inadvertently produced documents and shall immediately confirm in writing that  
24 all such copies have been returned. Nothing herein shall prevent the Receiving Party from  
25 challenging the propriety of the privilege or immunity designation by promptly filing an  
26 appropriate motion with the court, but the Receiving Party shall not challenge the propriety of the  
27 privilege or immunity designation on the grounds that the privilege or immunity was waived by  
28 production of the document or thing. If no such challenge is brought, or if any such challenge is

1 unsuccessful, no use shall be made of such documents during deposition or in any proceeding  
2 before the Court, nor shall they be shown to anyone who was not given access to them prior to the  
3 request to return such documents. Furthermore, if no such challenge is brought, or if any such  
4 challenge is unsuccessful, the Receiving Party shall promptly confirm in writing that any  
5 analyses, memoranda or notes that were internally generated based upon such inadvertently  
6 produced information have been deleted and/or destroyed.

7       10. Unless otherwise ordered by the Court or permitted in writing by the Designating  
8 Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL"  
9 only to the following Qualified Persons:

10       a.      the Receiving Party's outside counsel of record in this action (Fenwick &  
11 West LLP and Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.), as well as employees  
12 of said outside counsel to whom it is reasonably necessary to disclose the information or item for  
13 this litigation and who have signed the Confidentiality Agreement that is attached hereto as  
14 Exhibit A;

15       b.      the officers, directors, and employees (including in-house counsel) of the  
16 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
17 signed the Confidentiality Agreement (Exhibit A);

18       c.      independent consultants and expert witnesses retained by or for the parties  
19 or counsel for the parties, including technical consultants and accounting or financial experts,  
20 subject to the provisions of paragraph 11;

21       d.      the Court and its personnel;

22       e.      court reporters, their staffs, and professional vendors to whom disclosure is  
23 reasonably necessary for this litigation and who have signed the Confidentiality Agreement  
24 (Exhibit A); and

25       f.      the author of the document or the original source of the information.

26       11. The independent consultants and expert witnesses defined as Qualified Persons in  
27 paragraph 10(c) shall be allowed access to CONFIDENTIAL Protected Information only after the  
28 Receiving Party has complied with the following procedure:

1                   a.         Before receiving any CONFIDENTIAL Protected Information, the  
2 consultant or expert shall be furnished with a copy of this Order and shall acknowledge, by  
3 executing the Confidentiality Agreement in the form attached hereto as Exhibit A, that he or she  
4 has read this Order, understands it, and agrees to be bound by it, and also expressly consents to  
5 the jurisdiction of this Court in connection with any proceeding or hearing relating to the  
6 enforcement of this Order.

7                   b.         Outside counsel for the Receiving Party shall furnish a copy of the  
8 executed Confidentiality Agreement to the Designating Party, along with a curriculum vitae of  
9 the consultant or expert.

10                  c.         The Designating Party will have seven (7) court days to object in writing to  
11 the disclosure of CONFIDENTIAL Protected Information to the independent consultant or  
12 expert. If objection to the disclosure is made within seven (7) court days, the objecting party  
13 shall, no later than five (5) court days after objection, petition the Court for an order prohibiting  
14 the disclosure at issue. The objecting party shall have the burden of persuasion that disclosure  
15 should not be made. If an objection is made, no CONFIDENTIAL Protected Information shall be  
16 made available to the particular person until after the Court rules that disclosure can be made, so  
17 long as the objection is followed by a timely petition.

18                  12.        Unless otherwise ordered by the Court or permitted in writing by the Designating  
19 Party, a Receiving Party may disclose any information or item designated "HIGHLY  
20 CONFIDENTIAL" only to the following Qualified Persons:

21                  a.         the Receiving Party's outside counsel of record in this action (Fenwick &  
22 West LLP and Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.), as well as employees  
23 of said outside counsel to whom it is reasonably necessary to disclose the information or item for  
24 this litigation and who have signed the Confidentiality Agreement that is attached hereto as  
25 Exhibit A;

26                  b.         for Abbott: no more than three (3) in-house counsel who have no  
27 responsibility for competitive decision-making or for patent prosecution relating to FISH  
28 detection kits, and who sign the Confidentiality Agreement (Exhibit A) and have it served on the

1 opposing party prior to disclosure;

2           c.     for Dako: no more than three (3) in-house counsel who have no  
3 responsibility for competitive decision-making or for patent prosecution relating to FISH  
4 detection kits, and who sign the Confidentiality Agreement (Exhibit A) and have it served on the  
5 opposing party prior to disclosure;

6           d.     for The Regents: no more than three (3) in-house counsel within the Office  
7 of Technology Transfer who have no responsibility for competitive decision-making or for patent  
8 prosecution relating to FISH detection kits, and who sign the Confidentiality Agreement (Exhibit  
9 A) and have it served on the opposing party prior to disclosure;

10          e.     independent consultants and expert witnesses retained by or for the parties  
11 or counsel for the parties, including technical consultants and accounting or financial experts,  
12 subject to the provisions of paragraph 14;

13          f.     the Court and its personnel;

14          g.     court reporters, their staffs, and professional vendors to whom disclosure is  
15 reasonably necessary for this litigation and who have signed the Confidentiality Agreement  
16 (Exhibit A); and

17          h.     the author of the document or the original source of the information.

18          13.   Unless otherwise ordered by the Court or permitted in writing by the Designating  
19 Party, a Receiving Party may disclose any information or item designated “HIGHLY  
20 CONFIDENTIAL – RESTRICTED SEQUENCE DATA” only to the following Qualified  
21 Persons:

22          a.     the Receiving Party’s outside counsel of record in this action (Fenwick &  
23 West LLP and Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.), as well as employees  
24 of said outside counsel to whom it is reasonably necessary to disclose the information or item for  
25 this litigation and who have signed the Confidentiality Agreement that is attached hereto as  
26 Exhibit A;

27          b.     independent consultants and expert witnesses retained by or for the parties  
28 or counsel for the parties, including technical consultants and accounting or financial experts,

1 subject to the provisions of paragraph 14;

2           c.     the Court and its personnel;

3           d.     court reporters, their staffs, and professional vendors to whom disclosure is  
4 reasonably necessary for this litigation and who have signed the Confidentiality Agreement  
5 (Exhibit A); and

6           e.     the author of the document or the original source of the information.

7       14.   The independent consultants and expert witnesses referred to in paragraphs 12(e)  
8 and 13(b) shall be allowed access to HIGHLY CONFIDENTIAL and HIGHLY  
9 CONFIDENTIAL – RESTRICTED SEQUENCE DATA Protected Information only after the  
10 Receiving Party has complied with the following procedure:

11           a.     Unless otherwise ordered by the Court or agreed in writing by the  
12 Designating Party, a Receiving Party that seeks to disclose to an independent consultant or expert  
13 any information or item that has been designated “HIGHLY CONFIDENTIAL” or “HIGHLY  
14 CONFIDENTIAL – RESTRICTED SEQUENCE DATA” first must make a written request to the  
15 Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL or HIGHLY  
16 CONFIDENTIAL – RESTRICTED SEQUENCE DATA information that the Receiving Party  
17 seeks permission to disclose to the consultant and expert, (2) sets forth the full name of the  
18 consultant and expert and the city and state of his or her primary residence, (3) attaches a copy of  
19 the consultant or expert’s current resume and signed Confidentiality Agreement (Exhibit A), (4)  
20 identifies the consultant or expert’s current employer(s), (5) identifies each person or entity from  
21 whom the consultant or expert has received compensation for work in his or her areas of expertise  
22 or to whom the consultant or expert has provided professional services at any time during the  
23 preceding five years, and (6) identifies (by name and number of the case, filing date, and location  
24 of court) any litigation in connection with which the consultant or expert has provided  
25 professional services during the preceding five years. Nothing in this paragraph shall require a  
26 Receiving Party or consultant or expert to make any disclosure that is inconsistent with the  
27 consultant or expert's obligations to maintain the confidentiality of information and/or that is  
28 inconsistent with a court order. In such circumstances, the Receiving Party or consultant or

1 expert shall, at the time of the request, describe in writing why a full disclosure of the information  
2 set forth in Paragraph 14(a) cannot be made.

3                 b.         A Receiving Party that makes a request and provides the information  
4 specified in the preceding paragraph may disclose the subject HIGHLY CONFIDENTIAL or  
5 HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE DATA information to the identified  
6 consultant or expert unless, within seven (7) court days of delivering the request, the Receiving  
7 Party receives a written objection from the Designating Party. Any such objection must set forth  
8 in detail the grounds on which it is based.

9                 c.         A Receiving Party that receives a timely written objection must meet and  
10 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the  
11 matter by agreement. If no agreement is reached, the Receiving Party seeking to make the  
12 disclosure to the consultant or expert may file a motion as provided in Civil Local Rule 7 (and in  
13 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do so.  
14 Any such motion must describe the circumstances with specificity, set forth in detail the reasons  
15 for which the disclosure to the consultant or expert is reasonably necessary, assess the risk of  
16 harm that the disclosure would entail and suggest any additional means that might be used to  
17 reduce that risk. In addition to any such motion must be accompanied by a competent declaration  
18 in which the movant describes the parties' efforts to resolve the matter by agreement (i.e., the  
19 extent and the content of the meet and confer discussions) and sets forth the reasons advanced by  
20 the Designating Party for its refusal to approve the disclosure.

21                 d.         In any such proceeding, the Designating Party opposing disclosure to the  
22 consultant or expert shall bear the burden of proving that the risk of harm that the disclosure  
23 would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose  
24 the HIGHLY CONFIDENTIAL or HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE  
25 DATA information to its consultant or expert.

26                 15.         Protected Information and the substance or contents thereof, including any notes,  
27 memoranda or other similar documents relating thereto, shall be used by a Receiving Party, and  
28 anyone else permitted access to such information under this Order, solely for the purpose of this

1 action and any appeals therefrom, and shall not be disclosed or used in any other legal  
2 proceeding, including any legal proceeding involving any of the parties, or for any other purpose.  
3 It shall not be made available, or disclosed, or summarized to any persons, except as may be  
4 permitted by, and subject to the restrictions in, this Order.

5       16. Any person in possession of Protected Information shall exercise reasonably  
6 appropriate care with regard to the storage, custody or use of such Protected Information in order  
7 to ensure that the secrecy of the information is maintained.

8       17. If Protected Information is disclosed to anyone other than in a manner authorized  
9 by this Order, the party responsible for such disclosure must immediately bring all pertinent facts  
10 relating to such disclosure to the attention of the Designating Party and make every reasonable  
11 effort to retrieve such Protected Information and to prevent further disclosure.

12       18. When Protected Information is discussed, quoted or referred to in any deposition,  
13 the party discussing, quoting or referring to such information shall ensure that the only persons  
14 present are those permitted by paragraphs 10, 12, or 13 of this Order, as the case may be, to have  
15 access to such Protected Information.

16       19. During the course of preparing for a deposition or testimony, a fact  
17 deponent/witness may be shown another party's Protected Information that appears to be  
18 authored or received in the normal course of business by the deponent/witness. Use of Protected  
19 Information during a deposition shall be subject to compliance with this Order.

20       20. This Order shall not bar any attorney herein in the course of rendering advice to  
21 his or her client with respect to this action from conveying to any party client his or her  
22 evaluation in a general way of CONFIDENTIAL, HIGHLY CONFIDENTIAL or HIGHLY  
23 CONFIDENTIAL – RESTRICTED SEQUENCE DATA information produced or exchanged  
24 herein; provided, however, that in rendering such advice or otherwise communicating with his or  
25 her client, the attorney shall not disclose the specific contents of any CONFIDENTIAL, HIGHLY  
26 CONFIDENTIAL, HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE DATA  
27 information produced by another party herein contrary to the terms of this Order.

28       21. Any pleading, paper or other document filed or lodged in this action that contains

1 or discloses Protected Information shall be filed under seal in accordance with Civil Local Rule  
2 79-5 and Judge Patel's Standing Orders. A party shall designate information disclosed at a  
3 hearing or trial as Protected Information by requesting the Court, at the time the information is  
4 proffered or adduced, to receive the information only in the presence of those persons designated  
5 to receive such information, and to designate the transcript appropriately.

6 22. Entering into, agreeing to, or producing or receiving Protected Information or  
7 otherwise complying with the terms of this Order shall not:

8 a. operate as an admission by any party that any material designated as  
9 Protected Information contains or reflects trade secrets or any other type of confidential or  
10 proprietary information entitled to protection under applicable law;

11 b. prejudice in any way the rights of any party to object to the production of  
12 documents it considers not subject to discovery, or operate as an admission to any party that the  
13 restrictions and procedures set forth herein constitute adequate protection for any particular  
14 information deemed by any party to be Protected Information;

15 c. prejudice in any way the rights of any party to object to the authenticity or  
16 admissibility in evidence of any information subject to this Order;

17 d. prejudice in any way the rights of any party to seek a determination by the  
18 Court whether any Protected Information should be subject to the terms of this Order;

19 e. prejudice in any way the rights of any party to petition the Court for a  
20 further protective order relating to any purportedly Protected Information;

21 f. prejudice in any way the rights of any party to petition the Court for  
22 permission to disclose or use particular Protected Information more broadly than would otherwise  
23 be permitted by the terms of this Order; or

24 g. prevent any Designating Party from agreeing to alter or waive the  
25 provisions or protection provided for herein with respect to any particular material designated as  
26 Protected Information by that party.

27 23. Neither stipulation by a party to the terms of this Order nor failure of a party, at the  
28 time it receives materials designated as HIGHLY CONFIDENTIAL, HIGHLY CONFIDENTIAL

1 – RESTRICTED SEQUENCE DATA, or CONFIDENTIAL, to challenge or object to the  
2 HIGHLY CONFIDENTIAL, HIGHLY CONFIDENTIAL – RESTRICTED SEQUENCE DATA  
3 or CONFIDENTIAL designation shall be deemed a waiver of its right to challenge or object to  
4 the designations at any later time. Any party may at any time challenge the designation of any  
5 materials or information as HIGHLY CONFIDENTIAL, HIGHLY CONFIDENTIAL –  
6 RESTRICTED SEQUENCE DATA or CONFIDENTIAL and may request permission to use or  
7 disclose materials or information with the HIGHLY CONFIDENTIAL, HIGHLY  
8 CONFIDENTIAL - RESTRICTED SEQUENCE DATA, or CONFIDENTIAL designation other  
9 than as permitted, pursuant to this paragraph by serving (by facsimile and e-mail transmission) a  
10 written request upon counsel for the Designating Party at least seven (7) court days before the  
11 date of the proposed disclosure and by providing telephonic notice of such request on the same  
12 date as the facsimile and e-mail transmission. Such request shall specifically identify the  
13 Protected Information, including Bates label if applicable, sought to be disclosed and the name,  
14 title and function of the person to whom disclosure is desired to be made. The Designating Party  
15 shall thereafter respond to the request in writing within seven (7) court days after receipt of same.  
16 Absent good cause shown, a failure to respond within such time shall constitute consent to the  
17 request. If, where consent has been withheld, the parties are subsequently unable to agree on the  
18 terms and conditions of disclosure, the matter may be submitted to the Court for resolution by the  
19 party seeking disclosure. Disclosure shall be postponed until a ruling has been obtained from the  
20 Court.

21       24. All provisions of this Order restricting the use of information obtained during  
22 discovery shall continue to be binding on the parties and all persons who have received Protected  
23 Information under this Order, after the conclusion of this action, including all appeals, until  
24 further Order of the Court, unless the parties agree otherwise in writing. Any and all originals  
25 and copies of Protected Information shall, at the request of the Designating Party, be returned to  
26 the party within sixty (60) calendar days after a final judgment herein or settlement of this action,  
27 or, at the option of the Designating Party, destroyed in that time frame, except that outside  
28 counsel for each party may maintain in its files one copy of each pleading filed with the Court,

1 each deposition transcript together with the exhibits marked at the deposition, one copy of each  
 2 piece of correspondence, and documents constituting work product which were internally  
 3 generated based upon or which include Protected Information. In the event that outside counsel  
 4 maintains such documents, it shall not disclose material containing any Protected Information to  
 5 any third party absent subpoena or court order. Upon receipt of any subpoena for such  
 6 information, the party receiving the subpoena shall immediately notify outside counsel for the  
 7 Designating Party of the subpoena so that the latter may protect its interests. In the event that  
 8 documents are returned to or destroyed at the request of the Designating Party, the other party or  
 9 its outside counsel shall certify in writing that all such documents have been returned or  
 10 destroyed, as the case may be.

11       25. Non-parties who produce information in this action may avail themselves of the  
 12 provisions of this Order and Protected Information produced by non-parties shall be treated by the  
 13 parties in conformance with this Order.

14       26. Until such time as this Order has been entered by the Court, the parties agree that  
 15 upon execution by the parties, it will be treated as though it had been so ordered.

16 Dated: May 17, 2006

Respectfully submitted,

FENWICK & WEST LLP

19 By: /s/Lynn H. Pasahow  
 20 Lynn H. Pasahow

21 Virginia K. DeMarchi (CSB No. 168633)  
 22 ([vdemarchi@fenwick.com](mailto:vdemarchi@fenwick.com))  
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25 Attorneys for Plaintiffs/Counterclaim-Defendants  
 26 THE REGENTS OF THE UNIVERSITY OF  
 27 CALIFORNIA, ABBOTT MOLECULAR INC.  
 and ABBOTT LABORATORIES INC.

1  
2  
3 Dated: May 17, 2006  
4

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

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12 Attorneys for Defendant/Counterclaim-  
13 Plaintiff  
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DAKOCYTOMATION CALIFORNIA,  
INC.

16 IT IS SO ORDERED.  
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18 Dated: May 18, 2006  
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## EXHIBIT A

## **CONFIDENTIALITY AGREEMENT**

I, \_\_\_\_\_ state:

1. I reside at

2. I have received a copy of the Protective Order executed by counsel for the parties on \_\_\_\_\_, 2006 on behalf of The Regents of the University of California, Abbott Molecular Inc., Abbott Laboratories Inc., and DakoCytomation California, Inc. in the action entitled *The Regents of the University of California, et al. v. DakoCytomation California, Inc.*, Civil Action No. C 05-03955 MHP, United States District Court, Northern District of California. I have carefully read and understand the provisions of said Protective Order.

3. I am fully familiar with and agree to comply with and be bound by the provisions of said Protective Order. I understand that I am to retain all copies of any designated Protected Information in a secure manner, and that all copies are to remain in my personal custody until I have completed my assigned duties, whereupon the copies and any writings prepared by me containing any designated Protected Information are to be returned to counsel who provided me with such material. I will not divulge any Protected Information to persons other than those specifically authorized by said Protective Order, and will not copy or use any Protected Information, other than as provided in said Protective Order. I agree to submit to the jurisdiction of the Court for purposes of enforcement of said Protective Order.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.